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# The Politics of Implementation: Oregon's Statewide Transportation Planning Rule - What's Been Accomplished

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# The Politics of Implementation: Oregon's Statewide Transportation Planning Rule – What's Been Accomplished and How

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## INTRODUCTION

This paper is a case study of the evolution of Oregon's groundbreaking Transportation Planning Rule, from its adoption in 1991, up through present amendments. Our analysis is an assessment of how private- and public-sector investors grapple with the coproduction of the built environment under the constraints of a value system that emanates from the state, shepherded by litigious public interest groups. In this case, this value system is articulated in the Oregon administrative rule known as the Transportation Planning Rule. This Rule emphasizes a reduction in the reliance on automobiles and, among other things, requires a decrease in vehicle miles traveled by 20 percent and a decrease in parking spaces by 10 percent over 30 years.

The present research builds on our earlier study of the Rule. Our presentation at ACSP in 1995 followed a 1994 chapter by Adler in *Planning the Oregon Way*.<sup>1</sup> Now, three years after our last presentation, we will discuss where the Rule is today and the nature of the lessons that are to be learned from an analysis of its implementation over the past seven years.

This paper will briefly describe the content of Rule and the political contexts in which it and its precursor, the Transportation Goal, were born. We place the implementation of the rule within the context of the corporatist paradigm – that is, policymaking by three actors: a directive state, the private sector, and organized labor. This is corporatism with a twist, however: litigious public interest groups replace organized labor as the shepherds of the state's directives.

This paper will then turn to a discussion of the challenges that have surfaced in implementing the Rule and how these are reflected in the recent amendments to the Rule. We attempt to show how these challenges and amendments illustrate the nature of the tensions among the three principal groups in the corporatist paradigm. Finally, we will identify important planning and policy implementation lessons to be learned from a case study of the

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<sup>1</sup> S. Adler and M. J. Bianco, "Implementing Oregon's Statewide Transportation Planning Rule: The Dynamics of Conflict and Cooperation Within the Community of Planners," Paper presented at the 1995 ACSP Conference, October 1995, and S. Adler, "The Oregon Approach to Integrating Transportation and Land Use Planning," in *Planning the Oregon Way: A Twenty-Year Evaluation*, ed. C. Abbott, D. Howe, and S. Adler (Corvallis, OR: Oregon State University Press, 1994).

Transportation Planning Rule.<sup>2</sup> We conclude that three important factors stand out as responsible for the successes and failures in the Rule’s implementation: the importance of negotiation; the role of the litigious public interest group, 1000 Friends of Oregon; and shared commitment among planners to “do the right thing.”

### **Description and Background of the TPR**

In 1973, Oregon passed Senate Bill 100 (SB 100), its landmark land use planning bill. This bill required that local government plans be consistent with State land use planning goals. It also created the Department of Land Conservation and Development (DLCD) as the chief implementation body. By 1976, DLCD had adopted 19 statewide Land Use Planning Goals to guide land use planning in Oregon. DLCD adopted Goal 12, the Transportation Goal, in 1974. To administer the Transportation Goal, the department adopted the Transportation Planning Rule (OAR Chapter 660-012) in 1991 – 17 years after it had adopted the original goal.

The purpose of the Transportation Planning Rule (TPR) is to guide jurisdictions in Oregon through meeting the broad objectives of the Transportation Goal, which are “to provide a safe, convenient and economic transportation system,” while addressing the needs of the “transportation disadvantaged.”<sup>3</sup> The Rule has as a specific objective that metropolitan areas reduce per capita vehicle miles traveled by 10 percent over 20 years and by 20 percent over 30 years after a plan is adopted. It also requires 10-percent reduction in parking spaces over 30 years.

The primary mechanism through which the TPR strives to accomplish its mission is the requirement that jurisdictions within a Metropolitan Planning Organization area adopt a Transportation System Plan (TSP) that contains specific elements, including a public

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<sup>2</sup> The researchers relied on interviews with key informants and review of archival materials, including testimony and exhibits submitted during the TPR’s amendment process.

<sup>3</sup> L. Chapman, webmaster, “Summary of Oregon Statewide Goals,” Last updated 11/97 and accessed at [<http://www.lcd.state.or.us/backinfo/goals.htm>].

transportation plan, a bicycle and pedestrian plan, a parking plan, and a transportation financing program.<sup>4</sup>

The State has amended the TPR twice since its adoption – once in 1993 and once in 1995 – both times to extend jurisdictions’ deadline beyond the original date for adopting their TSPs.<sup>5</sup> The Rule also contains a requirement that it be reviewed every five years. The State commissioned its first formal review in 1996, contracting with the private consulting firm, Parsons Brinckerhoff Quade & Douglas, Inc., to carry out the task. Parsons Brinckerhoff released its initial findings in February 1997.<sup>6</sup> DLCD then conducted a series of public hearings to consider a number of proposed amendments to the Rule. The State adopted a number of these amendments on September 18, 1998.

Before moving on to consider the actors in the implementation and amendment process, as well as the nature of the amendments themselves, it is instructive to consider the political and cultural circumstances that gave rise to both the Transportation Goal in 1974 and the Transportation Planning Rule 17 years later.

As Adler explained in 1994, the Goal was a product of the environmental and political progressivism that characterized Oregon in the 1970s. There was a general atmosphere of consensus – rather than contentiousness – among policy actors during that period. The broad, nonspecific nature of the land use goals reflected a shared understanding of what many Oregonians wanted during this “Don’t Californicate Oregon” era.

In contrast, the Transportation Planning Rule arose in an atmosphere of conflict and dissension during a period – and this must be stressed – nearly two decades *after* the formulation of the original goal. One of the immediate precursors to the adoption of the Rule was a 1987 lawsuit by 1000 Friends of Oregon, a land use watchdog group, alleging that one of the Portland

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<sup>4</sup> Some elements of the TPR are required only for certain urban or rural areas or specific levels of government. For instance, only metropolitan planning organizations are required to adopt parking plans. Counties with populations under 25,000 may apply for exemption from the requirement of having to adopt a TSP.

<sup>5</sup> Jurisdictions originally had four years from the date of adoption of the TPR to complete their TSPs. The deadline was extended to May 1996.

<sup>6</sup> Parsons Brinckerhoff Quade & Douglas, Inc., with ECONorthwest, “Transportation Planning Rule Evaluation, Draft Report,” (Portland, OR, February 1997).

area's suburban counties had violated the state's land use laws by attempting to build a freeway outside of the urban growth boundary. The county eventually abandoned the freeway plan, but the lawsuit made it clear to DCLD that some sort of administrative rule was necessary to guide the decision-making process about highway planning in particular and transportation planning in general. Within a few years, the Transportation Planning Rule was born.

### **POLICY ACTORS AND THE CORPORATIST PARADIGM**

Pahl and Winkler developed the corporatist theory with respect to Britain in the 1970s.<sup>7</sup> "Stripped to its essentials, corporatism is principally defined by . . . the shift from a supportive to a directive role for the state in the economy."<sup>8</sup> In the traditional corporatist model, there are three key actors: the State, which dictates policy; the capital-owning and –controlling private sector; and labor union leadership, the conduit through which State policy is transmitted to the rank-and-file constituency.

In a modified corporatist paradigm, which we first set forth in 1995 and reiterate here, there is no role for labor. The conduit for State policy is instead the litigious public interest group, which represents the rank-and-file constituency in much the same way as the labor union leadership does in the traditional model. The public interest group negotiates State policy and transmits it to the citizenry, bringing to the negotiating table the threat not of a labor strike but of costly and time-consuming litigation.

In our case, the State policy is the goal of reduced reliance on the automobile, as articulated in the Transportation Planning Rule and the Transportation Goal. The goal of the private sector is economic competitiveness. As we noted in 1995, the goal of the public interest

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<sup>7</sup> R. Pahl, "Collective Consumption and the State in Capitalist and State Socialist Societies," in *Industrial Society: Class, Cleavage and Control*, ed. R. Scase (London: Tavistock, 1977); R. Pahl, "Stratification, the Relation Between States and Urban and Regional Development," *International Journal of Urban and Regional Research*, Vol. 1 (1977): 6-17; J. Winkler, "Corporatism," *European Journal of Sociology*, Vol. 17 (1975): 100-36; J. Winkler, "The Corporate Economy: Theory and Administration," in *Industrial Society: Class, Cleavage and Control*, ed. R. Scase (London: Tavistock, 1977).

<sup>8</sup> J. Winkler, J. "Corporatism," 103, quoted in P. Saunders, *Social Theory and the Urban Question*, (New York: Holmes & Meier Publishers, Inc., 1981) 126.

group (here, chiefly 1000 Friends of Oregon) is to protect and shepherd State policy and to serve as a counter to the demands of the private sector.

In the end, we found that there are at least two levels on which negotiation must occur: among the three parties in the corporate paradigm – the State, the private sector, and the public interest groups – and among localities striving to attract capital investment in their struggle for economic competitiveness. Our discussion of the challenges to implementing the TPR looks at the tensions present at both of these levels.

### **CHALLENGES TO IMPLEMENTING THE TRANSPORTATION PLANNING RULE**

When we last looked at the status of the TPR, actors in the implementation process were expressing concern with three primary features: the deadline for adoption of TSPs (originally four years after the adoption of the Rule itself), building orientation mandates (requiring, for example, that firms orient building entrances toward transit stops), and connectivity mandates (requiring that there be a “reasonably direct route of travel between destinations”).<sup>9</sup>

The Rule was amended in 1993 and 1995, both times to extend jurisdictions’ deadline to May of 1996 (a deadline which few jurisdictions reached<sup>10</sup>) and also to add detail to many provisions, such as the orientation and connectivity requirements. As we noted in 1995, much attention was given to specific interpretations of wording. By 1995, the amended version of the Rule was at least twice as long as the original, with previously contentious concepts such as “pedestrian connection,” “pedestrian scale,” and “reasonably direct” spelled out in detail.

The original Rule contained a provision that the State conduct an evaluation every five years. The focus of this evaluation was to be on the achievement of the VMT-reduction goal and the overall goal of reducing reliance on the automobile. The recent review process revealed a

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<sup>9</sup> OAR Ch. 660-12-055(1); OAR Ch. 660-12-045(4)(b)(A); OAR Ch. 660-12-045(3)(d)(B).

<sup>10</sup> Although the TPR requires individual jurisdictions to create a TSP, only a minority had done so by the time of the present review. For example, a recent survey of counties revealed that as of early 1998, only five of Oregon’s 36 counties had adopted a TSP, and another six counties were just starting to put theirs together. K. Schilling, “Implementation of Public Policy: The Transportation Planning Rule” (MPA capstone paper, Portland State University, 1998).

number of key areas of contentiousness that appear to have eclipsed the earlier concerns with deadlines, connectivity, building orientation, and definitions. The following nine proposed amendments illustrate the present concerns:<sup>11</sup>

1. Clarify Rule Purpose Statement as it relates to reducing reliance on the automobile
2. Clarify the methodology and standards for measuring VMT reduction regarding external trips
3. Reduce the VMT standard for the Salem, Eugene, and Medford metropolitan areas to 5%
4. Allow individual metropolitan areas to adopt measures other than VMT reduction to accomplish the requirement for reduced automobile reliance
5. Require that metropolitan jurisdictions revise land use patterns, densities, and design standards to promote development of compact, mixed use, pedestrian-friendly centers and neighborhoods
6. Require policies guiding project selection and funding that give consideration and priority to projects that implement local strategies to achieve reduced automobile reliance
7. Review of plan amendments for commercial uses in Metropolitan Areas that have not met the TPR
8. Add an option for Metropolitan Areas to adopt parking management measures in place of the current requirement for a 10% reduction in parking spaces per capita
9. Revised Standards for Review of Plan Amendments “Significantly Affecting” the Transportation System

As is apparent, the attention has now shifted to a focus on the fundamental goals of the Rule: a reduction in VMT and parking spaces. We now turn to a discussion of four of these amendments in terms of implications for planners and policy actors and in terms of the three policy groups identified in the modified version of the corporatist paradigm. We will also note the extent to which economic competition among localities appears as a dominant force.

### **Discussion of Amendments**

For our purposes, it is not necessary to provide a detailed discussion about each of the nine amendments listed above. We will instead focus on the following selected amendments: clarification of purpose statement, reduction of the VMT standard, allowance of individual metropolitan areas to adopt measures other than VMT standards, and addition of an option for

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<sup>11</sup> This is not an exhaustive list of all the amendments that were under consideration.



metropolitan areas to adopt parking management measures in place of the current requirement for a 10-percent reduction in parking spaces per capita. These amendments focusing on VMT and parking are at the heart of most of the present controversy surrounding the Transportation Planning Rule.

### Clarification of Purpose Statement

The TPR's existing purpose statement says:

The purpose of this division is to implement Statewide Planning Goal 12 (Transportation). . . . Through measures designed to reduce reliance on the automobile, the rule is also intended to assure that the planned transportation system supports a pattern of travel and land use in urban areas which will avoid the air pollution, traffic and livability problems faced by other areas of the country (OAR Chapter 660-012-000).

In its review of the Rule, Parsons Brinckerhoff found that a number of individual actors in the policy process did not feel that the “fundamental objectives . . . are sufficiently clear.”<sup>12</sup> The actors most likely to voice this concern were the state's smaller MPOs, smaller cities, the Oregon Department of Transportation (ODOT), the Homebuilder's Association, and the Retail Task Force.

This problem points to weaknesses with respect to causal theory and to clarity and consistency of objectives. It also reveals a lack of consensus among the individual actors in the State arm of the corporatist paradigm: not all MPOs, cities, or even the state DOT share the same policy goal as the chief policymaking entity here, the DLCD. The Retail Task Force and the Homebuilder's Association's concerns about goal clarity represent a disagreement in the private sector with the fundamental goal of the Rule. Parsons Brinckerhoff reports, for instance, that the Homebuilder's Association characterized the goals of the TPR as “dumb,” and the Retail Task Force questioned whether there really “is a problem with automobile use today,” labeling the TPR requirements “social engineering.”<sup>13</sup>

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<sup>12</sup> Parsons Brinckerhoff, “Transportation Planning Rule,” B-6.

<sup>13</sup> Ibid., B-33; B-37.

Not all segments of the State have problems with the DLCD's overall policy goal. Those most likely to support it are the Department of Environmental Quality and the Office of Energy. Strongest support comes from outside the State and from what the corporatist paradigm would predict to be the most likely source: 1000 Friends, the public interest group. As a result of cooperation between the supportive offices within the State and 1000 Friends, a proposed amendment to the Purpose Statement added the following language:

Land use and transportation patterns that rely too heavily on automobile use have contributed to a diminished quality of life due to air pollution, traffic congestion, and other problems. This portion of the rule aims to improve the livability of urban areas by promoting changes in land use patterns and the transportation system that make it more convenient for people to walk, bicycle and use transit, and drive less to meet their daily needs. Changing land use and travel patterns will also complement state and local efforts to meet other objectives, including containing urban development, protecting farm and forest land, reducing air, water and noise pollution, conserving energy and reducing emissions of greenhouse gases that contribute to global warming.

This proposed language only compounded the lack of clarity, however, with the Oregon Building Industry Association, for example, asking "What problem, exactly, is being fixed with this proposal? . . . What does it mean to "contain" urban development? . . . Is it really necessary for DLCD to weigh in on the issue of global warming?"<sup>14</sup> 1000 Friends provided the counter to the private sector, commenting that they were "pleased to see the added language in the purpose section . . . tying the TPR to efforts to reduce greenhouse gas emissions."<sup>15</sup>

The private sector's concerns about the basic goals of the TPR, as well as its complaints regarding specific requirements, lie behind its sense of having been "left out" of the decision-making process. This is evidenced in repeated requests for an "advisory

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<sup>14</sup> J. Chandler, J., Director of Governmental Affairs, Oregon Building Industry Association, to Bill Blosser, Chair, Land Conservation and Development Commission, Department of Land Conservation and Development, Salem, OR, 28 May 1998.

<sup>15</sup> K. Bartholomew, Staff Attorney, 1000 Friends of Oregon, to Bob Cortright, Department of Land Conservation and Development, Salem, OR, 24 April 1998.

committee” – presumably consisting of representatives from the business community – to be more involved in the policymaking process, particularly in terms of overseeing some sort of fiscal impacts analysis. This also serves as an illustration of the feature of corporatism that has the State, not the private sector, being the chief promulgator and director of policy, with a third arm (in this case, 1000 Friends) being the chief promoter of the policy.

The decisive role that the litigious 1000 Friends plays in this policy arena is aptly illustrated in comments by a transportation planning engineer with one of the smaller counties. With respect to clarity of objectives and language regarding “road improvements,” for example, this individual writes: “The meaning of these terms is in the eye of the beholder, who is probably an attorney, and increases the likelihood of [Land Use Board of Appeals] or court battles.”<sup>16</sup>

The private sector’s requests regarding an advisory committee, as well as the implied fear of litigation on the part of the transportation planning engineer quoted above, suggest weaknesses with respect to perceived access by outsiders, public support, and support by and commitment from leaders and implementing officials. Although DLCD has encouraged public input and participation, it has not gone so far as to appoint a committee that represents the business community – a fact that leaves many in the private sector feeling that they have been shut out of the process. The limited public involvement is a feature of another element in Pahl’s corporatist paradigm: the concept of “urban managerialism,” wherein unfettered democratic participation is restrained and the expert judgment of experts and officials reigns.<sup>17</sup>

On the other hand, the fact that not *all* public officials (such as the transportation planning engineer cited above) fully embrace the TPR reflects both the top-down nature

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<sup>16</sup> T. Stinchfield, Transportation Planning Engineer, Lane County Department of Public Works, to William Blosser, Chair, Land Conservation and Development Commission, Department of Land Conservation and Development, Salem, OR, 28 May 1998.

<sup>17</sup> See Saunders, *Social Theory*, 126.

of the decision-making in this matter and also a weakness in the support by implementing officials.

### Reduction of the VMT Standard

Undoubtedly the single most contentious element in the TPR has been the requirement that jurisdictions within MPOs reduce VMT by 10 percent within 20 years of adoption and 20 percent within 30 years. The original Rule (OAR Chapter 660-012-35(4)) states:

In MPO areas, regional and local TSPs shall be designed to achieve the following objectives for reducing automobile vehicle miles travelled (VMT) per capita for the MPO area:

- (a) No increase within ten years of adoption of a plan as required by OAR 660-012-0055(1);
- (b) A 10% reduction within 20 years of adoption of a plan as required by OAR 660-012-0055(1); and
- (c) Through subsequent planning efforts, a 20 percent reduction within 30 years of adoption of a plan as required by OAR 660-012-0055(1).

Activism chiefly on the part of Oregon's smaller MPOs resulted in an amendment proposal that would require only a 5-percent reduction in VMT in the Salem, Eugene, and Medford metropolitan areas. There are two elements involved in the controversy surrounding the VMT standard: one involves the use of VMT as a standard to begin with and the other involves the magnitude of the reduction. A number of parties question the use of VMT as opposed to, say, mode share, as a measure of automobile reliance – and in some cases the concern around this involves methodological problems with how VMT is measured. Other parties think the target is too high and are highly skeptical that it can be realistically achieved.

The tensions around the VMT standard suggest implementation weaknesses in a number of areas. One is, again, possible problems with an adequate causal theory – that is, some question whether a reduction in VMT in fact signifies a reduced reliance on the automobile. Another implementation weakness is a problem with resources, with most jurisdictions complaining of a lack of resources for undertaking any aspect of the TPR – especially technical

ones. There are also concerns around the technical feasibility of meeting the VMT requirements, as many planners question whether VMT can actually be measured. Finally, there are significant political feasibility questions: most of those involved in the TPR amendment process insist that the extent of behavioral change required is simply too great, that the VMT target is “unrealistic” given current travel habits.

The chief transportation modeler at Metro, the Portland area’s regional government and MPO, maintains that the correct way to estimate VMT is through panel surveying techniques, which none of the jurisdictions is using.<sup>18</sup> This concern, combined with ODOT data that Parsons Brinckerhoff cites indicating that per capita VMT grew in Oregon by over 40 percent between 1975 and 1994, underscores the difficulties in the VMT standard.<sup>19</sup> The result appears to be a lowering of the required reduction for smaller MPOs, while retaining VMT as the standard.

The backing away from the original reduction requirement is not surprising given the intensity of opposition against it. “We are unlikely to achieve even the 5% reduction,” reported one of the smaller MPOs.<sup>20</sup> Another MPO endorses a *goal* but not a requirement of a 5-percent reduction. Even the Portland area’s Metro expressed concern with the percentage reduction, claiming in formal comments to the DCLD that even with Metro’s sophisticated planning tools, “about a 10 to 15 per cent reduction in per capita VMT may be about the maximum achievable.”<sup>21</sup> In a less formal interview, Metro’s chief modelers admitted that the existing VMT standard “cannot be met without extreme pricing” and that “it is psychic pain to deal with something that is impossible, and not politically feasible.”<sup>22</sup>

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<sup>18</sup> Parsons Brinckerhoff, “Transportation Planning Rule,” B-1.

<sup>19</sup> Ibid., 27.

<sup>20</sup> T. Schwetz, TransPlan Project Manager, Lane Council of Governments, to Bob Cortright, Department of Land Conservation and Development, Salem, OR, 8 May 1998.

<sup>21</sup> J. Kvistad, Presiding Officer, Metro Council; Washington, E., Chair, Joint Policy Advisory Committee on Transportation; Hammerstad, J., Chair, Metropolitan Policy Advisory Committee, to William Blosser, Chair, Land Conservation and Development Commission, Department of Land Conservation and Development, Salem, OR, 8 May 1998.

<sup>22</sup> Parsons Brinckerhoff, “Transportation Planning Rule,” B-1.

Not everyone agrees with the skeptics of the VMT standard. One jurisdiction in particular, the City of Gresham, remains strongly supportive of the higher standards. “Let’s not give up on these areas [the smaller MPOs] until we have made efforts to give them all the necessary tools to achieve change.” This is a position that has not changed over our four-year analysis of the Rule’s implementation. Gresham has been at the forefront in embracing and championing the TPR and the general spirit behind the Transportation Goal. In large part, this has been due to the efforts of the city’s progressive mayor, Gussie McRobert, and also to the fact that Gresham was the first Portland suburb to realize any benefits from light rail development.

The voices in opposition to the standard eclipse the few votes of confidence, such as that from Gresham. One might expect the standard to be eliminated altogether, given the nearly unanimous opposition, except for one factor. 1000 Friends of Oregon, the protector of this policy, remains stalwartly opposed to any reduction in the VMT requirement: “We continue to believe that this recommendation [to lower the requirement for smaller MPOs] is premature. . . . land use planning changes can significantly reduce VMT per person. Until those measures have been tried and adopted, we believe that the current VMT standard should remain in place.”<sup>23</sup> Encouraged by 1000 Friends’ support, as well as that of the two environmental state agencies, the Department of Environmental Quality and the Office of Energy, DLCD appears committed to retaining a VMT-reduction requirement, although at reduced levels.

#### Optional Adoption of Measures Other than VMT Reduction

As suggested above, a number of jurisdictions object to the VMT requirement because they do not believe they can meet it and/or they do not have the technical resources to carry it out (specifically in terms of estimating VMT). MPOs in particular have expressed a desire to use methods other than VMT to reflect their progress toward reducing reliance on the automobile. As a result, the DCLD considered an amendment that would allow jurisdictions to use alternative standards.

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<sup>23</sup> Bartholomew to Cortright.

The amendment language is very lengthy and involved, and we will not review it here. The primary reason we have chosen to discuss this amendment is because it speaks to two crucial elements in the TPR's implementation hurdles: discretion and locational competitiveness. The dissension among jurisdictions' implementing officials is often tied to (a) their belief that the TPR is an unusually inflexible, rigid, top-down rule and (b) their sense that it is directed at the needs and capacity of the Portland metropolitan area (and the city of Portland in particular), while ignoring the circumstances of other jurisdictions. Both of these factors threaten many officials' already lukewarm endorsement of the Rule.

Frustration with the top-down approach to the policymaking behind the TPR is illustrated by one MPO's referring to the DLCD as "author, judge, jury, and executioner."<sup>24</sup> This same official's desire that the State recognize "where we are" and that all areas are different illustrates the frustration with what some feel is a Portland-centric policy.<sup>25</sup> Another MPO representative complained that jurisdictions that had a history of progressive transportation planning were not getting any credit and in fact were being "penalized" by having uniform statewide standards imposed on them.<sup>26</sup> A planning official from Eugene, Oregon's second largest city, summarized the attitude toward Portland best in saying that some of the amendments "seem to be written to address issues in the Portland Metropolitan Area. . . . While the revisions may 'work' for the Portland Metropolitan Area, the other MPOs in the state are very different" from the Portland region.<sup>27</sup>

In terms of flexibility, Metro officials acknowledge that "the most frustrating thing about the TPR is its precise rules," noting that "it would be better to have principles."<sup>28</sup> Metro also sees the optional alternatives amendment as the "key to the region's ability to submit a transportation system plan that complies with the TPR."<sup>29</sup> Even the Land Conservation and

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<sup>24</sup> Parsons Brinckerhoff, "Transportation Planning Rule," B-6.

<sup>25</sup> Ibid., B-7.

<sup>26</sup> Ibid., B-12.

<sup>27</sup> J. Childs, Planning Director, City of Eugene, to Chair Blosser and Members of the Land Conservation and Development Commission, Department of Land Conservation and Development, Salem, OR, 28 May 1998.

<sup>28</sup> Parsons Brinckerhoff, "Transportation Planning Rule," B-4.

<sup>29</sup> Kvistad, Washington, and Hammerstad to Blosser.

Development Commission, the policy arm of DLCD, recognizes that there is a sense that the department is “too rigid, too doctrinaire, and coming in too late in the planning process, and that we push beyond what is realistic.”<sup>30</sup>

#### Option to Replace the Requirement to Reduce Parking by 10 Percent

Section 45 of the Rule, “Implementation of the Transportation System Plan,” contains most of the provisions with respect to land use, such as connectivity and building orientation. It also contains the controversial requirement that jurisdictions in MPO areas implement a parking plan that

achieves a 10% reduction in the number of parking spaces per capita in the MPO area over the planning period. This may be accomplished through a combination of restrictions on development of new parking spaces and requirements that existing spaces be developed to other uses (OAR Chapter 660-12-045(4)).

As with the VMT-reduction requirement, implementation of the parking requirement has been difficult because of questions about the causal relationship of parking to reliance on automobiles, technical and resource constraints, and political feasibility problems. DLCD considered an amendment that would add an option for metropolitan areas to adopt parking management measures instead of the 10-percent reduction requirement. These alternative parking management measures might include reducing off-street minimum parking requirements or adopting off-street parking maximums.

The current parking reduction requirements have proven to be difficult to implement because a per capita reduction of any amount requires that MPOs inventory all parking spaces in their region, in order to have a baseline figure. This is a difficult and expensive undertaking. If all spaces could be inventoried, most planners and policymakers agree that the 10-percent reduction could be achieved, although not everyone agrees that the number of parking spaces is necessarily correlated with automobile reliance.

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<sup>30</sup> Parsons Brinckerhoff, “Transportation Planning Rule,” B-17.



Most, however, eagerly embrace the proposed amendment – even jurisdictions such as Portland and Gresham that had already taken inventories or implemented reduction strategies. Reducing parking minimums and establishing parking maximums seem to strike most policymakers as reasonable techniques for managing parking. The fact that this amendment would provide jurisdictions with the *option* (i.e., flexibility) to implement a range of parking management measures is particularly appealing. As one small-city mayor noted, “The recommendation allows local governments to choose the parking reduction methods best suited to its [*sic*] unique circumstances and local parking needs.”<sup>31</sup>

The private sector’s attitude toward the parking requirements has been less enthusiastic than the public sector’s. The Commercial Real Estate Economic Coalition (CREEC) was so concerned with the original wording in the Rule that it didn’t even bother to express an opinion about the amendment:

How a jurisdiction can impose a requirement on how and possibly when, existing parking spaces are to be redeveloped is beyond reason. This goes beyond any requirements currently in the [local regional plan] and is not supported by market or reality. Existing uses will, or will not, redevelop to “other uses” based on market forces. To require otherwise exceeds the parameters of reasonableness.<sup>32</sup>

Although the private sector’s strident opposition to the parking requirements might have made it difficult for businesses to articulate a position one way or another on the proposed amendment, 1000 Friends, on the opposite side of the table, voice strong support for the revision. 1000 Friends’ support is not as tied to the flexibility of the proposed amendment as to the fact that the public interest group supports the alternative parking management measures the amendment suggests, such as parking maximums. Lowering parking minimums is something that has widespread agreement, even among private business, which, despite its claim that “parking is

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<sup>31</sup> G. Faber, Mayor, City of Hillsboro, to William Blosser, Chair, and Members, Oregon Land Conservation and Development Commission, Salem, OR, 30 April 1998.

<sup>32</sup> R. White, Executive Vice President, CREEC, to Bob Cortright, Transportation Planning Coordinator, Department of Land Conservation and Development, Department of Land Conservation and Development, Salem, OR, 28 April 1998.

our lifeblood,”<sup>33</sup> may see itself as benefiting from a reduction in the obligation to provide a certain amount of parking.

### Amendment Adoption

On September 18, the State adopted amendments to the TPR, including those discussed above. DLCD notes that “a major purpose of the proposed amendments was to revise the TPR to clarify and improve portions of the rule that require metropolitan areas to plan for reduced reliance on the automobile.”<sup>34</sup> This underscores the focus of the amendment process on substantive issues related to VMT and purpose statement language, as opposed to implementation details such as definitions of connectivity. One proposed amendment, not discussed above, would have required metropolitan areas “to reconsider land use designations as a means of reducing reliance on automobiles.”<sup>35</sup> The State has deferred action on this amendment to its work on creating an administrative rule for Goal 14, the urbanization goal that requires all cities to estimate future growth and needs for land and then plan accordingly.

## **LESSONS FROM THE IMPLEMENTATION OF THE TPR**

Our review of the TPR reveals as much about the policy *process* as it does about the specific content of the policy. First, we find that those affected by the TPR have become more concerned over time with the fundamental goals of the Rule – VMT and parking space reduction – and less concerned about specific details such as building orientation and street connectivity. In part, this concern with more fundamental goals may be due to the *opportunity* to call those goals into question, which the required five-year review provided. In other words, as noted above, the purpose of the review was in fact to focus on the Rule’s requirement for reduced automobile reliance. The concern with fundamental goals may also be due to the fact that individual plan provisions, such as requiring that new establishments be oriented primarily toward transit stops, are what implementing agencies come up against on an immediate, daily basis as they grant

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<sup>33</sup> Parsons Brinckerhoff, “Transportation Planning Rule,” B-38.

<sup>34</sup> DLCD, “Highlights of September 1998 TPR Amendments” (Salem, OR, 1998), 1.

<sup>35</sup> DLCD, “Highlights of September 1998 TPR Amendments” (Salem, OR, 1998), 2.

building permits or try to create their transportation plans. The immediacy of these implementation issues may account for their having been the subject of earlier amendments.

The larger goal of “reducing reliance on the automobile” and the specific objectives of percent per capita reductions in VMT and parking spaces seem to be considered more as guiding principles – however precise – whose achievement is not to be judged on an ongoing basis. Again, though, when the opportunity arose for evaluating these larger goals and objectives, the door was opened for those involved in the policy process to set aside their concerns with what in comparison were minor issues – street connectivity, for instance – and focus on the fundamental spirit behind the Rule.

Three significant lessons emerge from a review of this process: the fact that the amended Rule comes as the result of an arduous process of negotiation among a multitude of individual actors in the corporatist paradigm; the fact that the role of 1000 Friends as the litigious public interest group has been crucial in counteracting tendencies by the Rule’s opponents to eliminate or severely weaken elements in the Rule; and the fact that despite a great deal of contentiousness, most parties involved agree that, in the final analysis, implementation of the TPR is the “right thing to do.” Despite the various challenges to implementation, there remains a genuine reluctance to back away from the objectives – however vague – of the Rule. This general commitment on the part of most involved in the policy process – which we observed in 1995 – lessens the impact of less-than-enthusiastic support from a number of implementing officials.

### **The Importance of Negotiation**

The Rule contains the following language requiring that DCLD’s Land Conservation and Development Commission (LCDC) review the Rule every five years:

The Commission shall, at five year intervals from the adoption of this rule, evaluate the results of efforts to achieve the reduction in VMT and the effectiveness of the standard in achieving the objective of reducing reliance on the automobile. This shall include evaluating the requirements for parking plans and a reduction in the number of parking spaces per capita (OAR Chapter 660-012-0035(7)).

The Rule does not require that LCDC contract with a private consulting firm to undertake the review, but this is what the Commission did. Parsons Brinckerhoff Quade & Douglas, Inc., the contracted firm, carried out the review with the assistance of ECONorthwest, an economic analysis consulting firm. The State and the consultants agreed that the analysis should emphasize an interview of key stakeholders. Parsons Brinckerhoff interviewed representatives and officials from Oregon's four MPOs; state agencies, including LCDC, ODOT, DEQ, and the Governor's office; transit agencies; and interest groups such as 1000 Friends of Oregon, the Bicycle Transportation Alliance, the Homebuilders Association, and the Retail Task Force. Parsons Brinckerhoff also examined literature and data regarding VMT. The consultant then made recommendations to the State regarding amendments, which reflected the input from the stakeholders, as well as the factual data. From the beginning of the review, then, the approach was one of negotiation and compromise.

The State proceeded through a series of hearings and working meetings to review the consultant's recommendations. Most agencies involved, such as MPOs, set up their own task force to work on the amendment recommendations. The private sector participated, as did 1000 Friends. LCDC's Transportation Subcommittee, which includes representatives from these stakeholder groups, worked on the amendments, incorporating the input from interest groups and the public, for a period of over a year and a half.

The process has been remarkable. Despite individual stakeholders' own interests, a "culture of dialogue" has dominated, with all parties apparently understanding the importance of representing a particular interest while at the same time recognizing the validity of opposing interests and acknowledging the necessity of compromise. The result has been that what was initially an admittedly ambitious (or, to some observers, "unrealistic") Rule is being modified into something that represents compromise while continuing to challenge jurisdictions to rise to a standard that is higher than that found in "other areas of the country."

This does not mean that there is no bitterness and that all parties involved consider themselves colleagues. One member of the Retail Task Force characterized the group's position

as one of “hostility, frustration, cynicism, and mistrust” in response to what they considered “manipulation, exaggeration, and distortion” by the government.<sup>36</sup> Yet, when this group’s representative meets with the rest of LCDC’s Transportation Subcommittee, civility and, indeed, commitment to the negotiation process *and* to the Rule’s overall goals, dominate.

### **The Role of 1000 Friends of Oregon**

1000 Friends of Oregon is a public interest group that has dedicated itself to the enforcement and protection of Oregon’s land use laws since the 1970s. Although 1000 Friends bills its membership as including “wine producers and woodlot owners, office builders and orchardists, farmers, environmentalists, ranchers, teachers, computer software engineers,”<sup>37</sup> this group’s most important members are perhaps its attorneys. Staff attorney Keith Bartholomew, in particular, has been at the forefront in fighting for the cause of transportation alternatives and land use controls.

The Parsons Brinckerhoff report paraphrases Bartholomew’s position with respect to the TPR and suggested amendments:

We should not change the rule. It is important to reduce reliance on the automobile. Without implementing the rule, VMT will continue to grow. We need to protect livability and the transportation investments that have already been made. We need to wisely spend the shrinking transportation funds. *The credibility of LCDC depends upon us maintaining the rule.*<sup>38</sup>

The concerns about LCDC’s “credibility” reflect 1000 Friends’ position in the corporatist paradigm as the “protector” of the State’s objectives. Unlike other sympathetic interest groups, such as the Portland Bike Alliance, 1000 Friends is not committed just to the principles of the Rule, but to the agency behind the Rule.

This protection is important to the Rule and to the State. It is important because 1000 Friends has a powerful weapon: the threat of lawsuits against any entity, be it private or public,

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<sup>36</sup> Parsons Brinckerhoff, “Transportation Planning Rule,” B-39.

<sup>37</sup> 1000 Friends of Oregon, “1000 Friends of Oregon,” Last updated 10/28/98 and accessed at [<http://www.teleport.com/~friends/intro.html>].

<sup>38</sup> Parsons Brinckerhoff, “Transportation Planning Rule,” B-35 (*italics added*).

that violates the sanctity of the land use laws. And, it is not just the threat of lawsuit that makes 1000 Friends so powerful, but the fact that it has a successful record of winning land use law cases in the state. It is clear that the State's relies on the support of 1000 Friends in the implementation of its policy.

### **"Do the Right Thing"**

What is truly remarkable is that, on at least some level, nearly everyone involved in the TPR process agrees that the overall goal of reducing reliance on the automobile is the "right thing to do." People seem to agree with the principles behind the Rule, even if they complain that those principles are not quite clear. A common theme is that the Rule serves as a catalyst for planners to do the kind of planning that they consider on some fundamental level to be "good planning":

The TPR is an excellent document, or an excellent rule, to get us moving and keep us moving, kind of kicking us in the rear to keep moving. But it is not like it took the TPR to wake us up to these things. We already knew that we wanted to make bicycles more convenient and get more double sidewalks. We already knew we wanted to do that.<sup>39</sup>

In some cases, however, one gets the impression that implementing officials did not necessarily have a preconceived notion of "good planning." In this regard, the implementation of the TPR has served as something of an educational process. This seems to be particularly the case with smaller jurisdictions, where one person is responsible for virtually all planning activities. One such planner, for example, commented with respect to the TPR's VMT requirement, "I think that is a very, very good goal, but I don't really know that much about it."<sup>40</sup>

The commitment to the TPR as the right thing to do does not appear to be related to officials' belief that the requirements of the TPR are actually attainable. In fact, as we have shown, some jurisdictions are not particularly committed to the Rule, although they, too, seem

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<sup>39</sup> M. Becketl, Principal Transportation Planner, City of Salem, Interview by Joshua Thomas, Salem, OR, 20 May 1998.

<sup>40</sup> A. Drought, City Planner, City of Keizer, Interview by Joshua Thomas, Keizer, OR, 20 May 1998.

compelled to implement it for reasons beyond its being the law. The ambivalence toward the Rule is illustrated in the comments of a City of Portland planner:

Some don't believe in the TPR, but are going along with it. Others are a little "starry eyed" and unrealistic. Some are afraid and exaggerate the possible outcomes. The goals are lofty, but this is okay as long as the jurisdictions aren't held to them. For example, the City has long had a goal of 75-percent transit use in the downtown area. No one thinks they will ever achieve it, but keeping [the goal] has made things happen that otherwise might not have occurred.<sup>41</sup>

The same may well be said of the Rule itself: it has made things happen that otherwise might not have occurred.

At the same time, however, the Rule has engendered enmity and anger. In conservative Clackamas County, for instance, elections are being won and lost on the TPR issue. This is not a typical administrative rule. It centers around two of the most volatile social issues: mobility and freedom. Conservative public officials and some among the business community express outright hatred of the Rule. Among these actors in the process, it is politically dangerous to support the Rule. "The general opinion is that they will implement the plan, but won't be happy about it."<sup>42</sup>

## CONCLUSIONS

Our analysis of Oregon's Transportation Planning Rule over the past seven years has revealed that the context in which implementation is occurring is dynamic and politically and emotionally charged. Although the original Transportation Goal was formulated during a time of relative harmony among policymakers, the Rule itself emerged out of controversy and has remained embroiled in controversy ever since.

From the time of its inception, the Rule has had its detractors, particularly smaller jurisdictions and the private sector. Initially, much of the opposition centered around specific

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<sup>41</sup> S. Dotterer, Transportation Planning Manager, City of Portland, Interview by Susan Lee (paraphrased comments), Portland, OR, 29 May 1998.

<sup>42</sup> R. Wyman, Transportation Planner, Clackamas County, Interview by Susan Lee (paraphrased comments), Milwaukie, OR, 19 May 1998.

planning requirements, such as building orientation and street connectivity. Once the Rule was opened up for a more critical examination at the time of its required five-year review, actors in the policy process called into question the fundamental goals of the Rule – specifically those related to VMT and parking reduction.

Our study has revealed that the implementation of the TPR continues to occur within a corporatist framework, with the litigious public interest group, 1000 Friends of Oregon, playing the role of protector and chief advocate of the State's value system as articulated in the Rule. The role of 1000 Friends as a counterweight to the interests of private business has been crucial in maintaining the integrity of the Rule's original goals.

As important as the role played by 1000 Friends is the process of negotiation and consensus building that has occurred during implementation, particularly in the review stage. The result of this negotiation is a softening of the Rule's requirements to what many feel is a more realistic level while at the same time retaining the overall goal of reduced reliance on the automobile.

Implementation of the Rule has encountered a number of difficulties due to a number of weaknesses in the policy process. These include the lack of a clear causal link between requirements and goals, lack of resources, inconsistent levels of support among implementing officials, unclear and vague objectives, inflexibility and lack of discretion among implementers, technological constraints, political infeasibility, and a Portland-centered approach.

Despite these admittedly significant weaknesses, the Rule has not been abandoned, and most implementing officials continue to work toward compliance. The persistence of 1000 Friends and the atmosphere of negotiation and compromise have been important factors in the progress that is being made. Even more important, though, is the sense that many have that the goals of the Rule constitute "good planning" and that implementing the Rule is the "right" thing to do. The Rule, if nothing else, serves as a catalyst to keep planners and policymakers moving in what many of them feel is the right direction – even if they remain skeptical that the ultimate goals of specific VMT or parking space reduction will ever be reached.



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